

CONTRACT #2
RFS # 339.03-355
FA # 05-16373

**Mental Health and
Developmental Disabilities**

VENDOR:
FEI.COM, Inc.

RECEIVED

OCT 02 2008

FISCAL REVIEW



STATE OF TENNESSEE
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
DIVISION OF ALCOHOL & DRUG ABUSE SERVICES
1ST FLOOR, CORDELL HULL BUILDING
425 FIFTH AVENUE NORTH
NASHVILLE, TENNESSEE 37243

Memorandum

DATE: October 1, 2008
TO: Fiscal Review Committee
FROM: Department of Mental Health and Developmental Disabilities
RE: Non Competitive Contract Request for FEI.com
RFS # 339.03-355-09

We are requesting a non competitive contract with FEI.com to provide for the development and enhancement of the existing web-based Tennessee Web Infrastructure for Treatment Services (TN-WITS) system and user support, training, maintenance and hosting of an enhanced TN-WITS system. The proposed contract's maximum liability will be Nine Hundred Forty Seven Thousand Seven Hundred Eighty Eight Dollars (\$947,788).

Terms of the contract: This contract is scheduled to begin on October 1, 2008 and end on June 30, 2011.

Basic justification for the non-competitive procurement: Since 2005, the Tennessee Department of Mental Health and Developmental Disabilities, Division of Alcohol and Drug Abuse has successfully been using a web-based system to meet the federal data collection and reporting requirements of the Access to Recovery Program. That web-based system could more easily be enhanced to meet other federal data collection and reporting requirements, accommodate other federal and state funded programs, provide a more efficient system for contracted service providers and the State to track services and the individuals who receive those services.

Therefore, we believe it is in the best interest of the State to keep the company who originally developed and built the system (FEI.com) as the vendor through the non-competitive negotiation process rather than using the competitive process to find a new vendor who would have to build a brand new system from the ground up. FEI.com is the

federally-approved provider of these services and has created similar web-based systems in other states.

Additionally, on March 21, 2008, the State received a "Special Program Condition" in the notice of the Substance Abuse Prevention and Treatment (SAPT) Block Grant for Fiscal Year 2008, from The United States Department of Health and Human Services, Substance Abuse & Mental Health Services Administration (SAMHSA). This Special Program Condition required the State to "submit adequate data to complete form T-6 or submit time-framed plans in the form of a correction action plan describing how the State will collect and report adequate data by the end of FY 2009." The Corrective Action Plan was submitted on June 16, 2008, and was approved on June 27, 2008.

A technical assistance site visit was provided by SAMHSA and it was recommended that the State convert to a web-based system that would accommodate all of the programmatic functions of the Division of Alcohol and Drug Abuse Services. This web-based system designed by FEI.com, was a federally-approved system that has proved to be capable of meeting the reporting requirements set forth by SAMHSA. To aide with the cost of this system and to be in compliance with the approved corrective action plan, SAMHSA provided \$100,000 in technical assistance funds to the State for the purchase of this system.

To customize the FEI.com's web-based system for use in Tennessee is more cost-effective because the State benefits from lower development and enhancement costs through access to other state's system modules as they become available. Given that we have successfully used this system since 2005, and that the infrastructure is already well established, and that the system can be enhanced as stated above, we do not believe it would be in the best interest of the State to put all of that aside and start over.

Why the request is late: We began this process when we first received the "Special Program Condition" mentioned above. We soon realized that in order to meet the federal data collection and reporting requirements, and not lose federal funds, we needed to replace our existing data collection and reporting system. Given the cost of such an undertaking, the Department started looking for outside funding sources.

In June 2008, we received notice from RTI International (contractor for SAMHSA) that we would be eligible for funding to support the expansion of the web-based system currently being used. We submitted an application for this funding and also prepared a project proposal for Tennessee's Office for Information Resources (OIR). We received an Award Notice of \$100,000 from RTI International on July 15, 2008. OIR's approval of the project proposal was received on August 11, 2008. After extensive review and approval by TDMHDD Legal, the fully executed contract through which the award is to be received from RTI International was received on September 2, 2008. In order to meet the timelines in both the RTI International contract and the project proposal submitted to OIR, and to meet the date set by SAMHSA of when data collection and reporting must begin, it is imperative that the start date of the contract with FEI.com be October 1, 2008.

REQUEST: NON-COMPETITIVE CONTRACT

APPROVED

Commissioner of Finance & Administration

Date:

Each of the request items below indicates specific information that must be individually detailed or addressed as required. A request can not be considered if information provided is incomplete, non-responsive, or does not clearly address each of the requirements individually as required.

| | | |
|---|--|--|
| 1) RFS # | 339.03-355-09 | |
| 2) State Agency Name : | Department of Mental Health and Developmental Disabilities (DMHDD) | |
| 3) Service Caption : | Software Application Development and Enhancement, User Support, Maintenance, and Hosting | |
| 4) Proposed Contractor : | FEI.com, Inc. | |
| 5) Contract Start Date : (attached explanation required if date is < 60 days after F&A receipt) | October 1, 2008 | |
| 6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised : | June 30, 2011 | |
| 7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised : | \$947,788 | |
| 8) Approval Criteria : (select one) | <input checked="" type="checkbox"/> use of Non-Competitive Negotiation is in the best interest of the state <input type="checkbox"/> only one uniquely qualified service provider able to provide the service | |
| 9) Description of Service to be Acquired : | | |
| <p>System development and enhancement services are needed to expand the current Tennessee Web Infrastructure for Treatment Services (TN-WITS) system used for the Access to Recovery II (ATR II) program. The additional development and enhancements will enable the State to accommodate other federal and state funded programs within DMHDD's Division of Alcohol and Drug Abuse Services. Additional services to be acquired include training, user support, maintenance, and hosting of the enhanced system.</p> | | |
| 10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service : | | |
| <p>As a recipient of the federal Substance Abuse Prevention and Treatment (SAPT) Block Grant, we are required to submit National Outcome Measures (NOMS) and Treatment Evaluation Data Set (TEDS) results and reports to the United States Substance Abuse and Mental Health Services Administration (SAMHSA). Our current Microsoft Office Access database system, Alcohol and Drug Management Information System (ADMIS), used for prevention and treatment service utilization, tracking, documentation, and billing has caused unacceptable delays in the data reporting due to its age and capacity; and in some areas, the current system lacks the capability to capture certain data elements. In order to meet the federal data collection and reporting requirements, it has become apparent that a replacement system for ADMIS is necessary.</p> <p>Additionally, due to the inadequacy of the ADMIS system, we have not been able to submit the required data about individuals receiving Social Support of Recovery Services. Such inability resulted in the State receiving a special program condition to the Notice of the SAPT Block Grant for Fiscal Year 2008. This condition required the State to submit a corrective action plan addressing what will be done to remedy this infraction. Through the corrective action plan, SAMHSA was notified that a web-based system will be implemented to incorporate all data elements and proper data collection measurements to bring the State into compliance with federal data collection and reporting requirements. The timeframe for the implementation of this system and data collection is scheduled to begin April 2009. SAMHSA, being familiar with this web-based system, approved the corrective action plan contingent upon our ability</p> | | |

to implement the system and collect the required programmatic data.

11) Explanation of Whether the Procuring Agency Bought the Service in the Past, & if so, What Procurement Method It Used :

The procuring agency did buy similar services in the past. FEI.com was awarded a contract on August 1, 2005 to provide these services for the Access to Recovery grant (ATR I) the State was awarded by SAMHSA. The 2005 contract was awarded to FEI.com through the competitive negotiation process. When Tennessee was one of the few states to be awarded a second ATR grant (ATR II) in 2008, FEI.com was approved, through the non-competitive contract request process, to continue to provide these services.

12) Name & Address of the Proposed Contractor's Principal Owner(s) :
(not required if proposed contractor is a state education institution)

Jiaozhong Gu, CEO

FEI.com, Inc.

8930 Old Annapolis Road, Suite C

Columbia, MD 21045

TEL: (443) 270-5101

FAX: (410) 712-0220

EMAIL: jgu@feinfo.com

13) Evidence of the Proposed Contractor's Experience and Length of Experience Providing the Service :

The Contractor, FEI.com, incorporated in 1999, has provided information technology (IT) services to the United States Center for Substance Abuse Treatment (CSAT), the United States Center for Substance Abuse Prevention (CSAP), the United States Center for Mental Health Services (CMHS), and the States of Illinois, Alaska, Wyoming, Hawaii, Iowa, Maryland, and Tennessee in developing web-based systems. In response to CSAT's requirements of a voucher management system that tracks treatment and prevention services, FEI.com was the original developer of the WITS system and became the primary, federally-approved contractor for states and a recognized leader in web-based systems. FEI.com has successfully been providing services for the web-based system in Tennessee since 2005 and has familiarity and experience with our current ADMIS system. FEI.com has a very clear understanding of our data management needs.

14) Documentation of Office for Information Resources Endorsement :
(required only if the subject service involves information technology)

select one:

☐

Documentation Not Applicable to this Request

☒

Documentation Attached to this Request

15) Documentation of Department of Personnel Endorsement :
(required only if the subject service involves training for state employees)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

16) Documentation of State Architect Endorsement :
(required only if the subject service involves construction or real property related services)

select one:

☒

Documentation Not Applicable to this Request

☐

Documentation Attached to this Request

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

The procuring agency used the competitive procurement process to initially purchase IT services for the web-based system described elsewhere in this request. The success of the system and experience of the company who built the system, coupled with the recommendation of SAMHSA to secure the services of the federally-approved contractor in order to meet data collection and reporting requirements as noted in the response to Item 10 of this request, leads us to seek enhancements of the existing system rather than seek a new vendor to start all over again with building a new system from the ground up. We believe it would be unnecessarily costly to entertain other procurement alternatives for the required services.

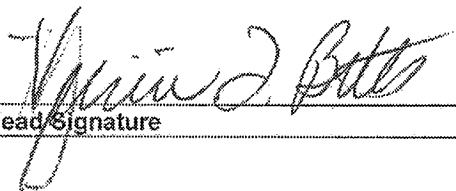
18) Justification of Why the State Should Use Non-Competitive Negotiation Rather Than a Competitive Process :
(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

Because we currently have a successful web-based system that could more easily be enhanced to meet the federal data collection and reporting requirements, accommodate other federal and state funded programs, provide a more efficient system for contracted service

providers and the State to track services and the individuals who receive those services; we believe it is in the best interest of the State to keep the company who originally developed and built the system (FEI.com) as the vendor through the non-competitive negotiation process rather than using the competitive process to find a new vendor who would have to build a brand new system from the ground up. FEI.com is the federally-approved provider of these services and has created similar web-based systems in other states, therefore, to customize the system for use in Tennessee is more cost-effective because the State benefits from lower development and enhancement costs through access to other state's system modules as they become available. Given that we have successfully used this system since 2005, and that the infrastructure is already well established, and that the system can be enhanced as stated above, we do not believe it would be in the best interest of the State to put all of that aside and start over.

REQUESTING AGENCY HEAD SIGNATURE & DATE :

(must be signed & dated by the ACTUAL procuring agency head as detailed on the Signature Certification on file with OCR— signature by an authorized signatory will be accepted only in documented exigent circumstances)



9/30/08

Agency Head Signature

Date

**FAX/EMAIL TRANSMITTAL****to Request OIR Procurement Endorsement**

TO : Jane Chittenden, Director
OIR Procurement & Contract Management **FAX # 741-6164**

FROM : Richard Zhu, Assistant IT Director, MHDD **FAX # 532-6629**

DATE : 09/16/08

RFS # 339.03-355 (ADMIS Replacement)

RE : Procurement Endorsement

INFORMATION SYSTEMS PLAN PROJECT: CI970101**NUMBER OF FAX PAGES (including cover) :**

The nature and scope of service detailed in the attached service procurement document(s) appears to require Office for Information Resources (OIR) review and support, because the procurement involves information technology or information systems services.

This communication seeks to ensure that OIR is aware of the procurement and has an opportunity to review the matter. Please determine whether OIR is supportive of the procurement. If you have any questions or concerns about this matter, please call Richard Zhu at 532-8636.

Please indicate below your response to this proposed procurement, and return this communication at your earliest convenience (note the return FAX number above).

Thank you for your help.

Attachment(s)

Must include the entire contract or amendment document and where applicable, the non-competitive contract or amendment request form. The original contract and any prior amendments that were applied to the same section of the contract must be provided with an amendment. Electronic copies of the contract, amendments, and request form without signature are acceptable.

RFP documents must be provided in electronic form.

OIR Endorsement :

Mark Bengel (gc)

9/17/08

OIR Chief Information Officer

Date

PROPOSED CONTRACT SUMMARY SHEET

121107

| | | | | | | | |
|---|---|--|---|---|------------------------------|---------------|--|
| RFS # | | | | Contract # | | | |
| 339.03-355-09 | | | | FA-09- | | | |
| State Agency | | | | State Agency Division | | | |
| Department of Mental Health and Developmental Disabilities | | | | Alcohol and Drug Abuse Services | | | |
| Contractor Name | | | | Contractor ID # (FEIN or SSN) | | | |
| FEI.com, Inc. | | | | <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 52-2067447-00 | | | |
| Service Description | | | | | | | |
| Development and enhancement of the existing web-based Tennessee Web Infrastructure for Treatment Services (TN-WITS) | | | | | | | |
| Contract BEGIN Date | | Contract END Date | | Subrecipient or Vendor? | | CFDA # | |
| 10/01/08 | | 6/30/11 | | Vendor | | 93.275 | |
| Mark Each TRUE Statement | | | | | | | |
| <input checked="" type="checkbox"/> Contractor is on STARS | | | | <input checked="" type="checkbox"/> Contractor's Form W-9 is on file in Accounts | | | |
| Allotment Code | Cost Center | Object Code | Fund | Funding Grant Code | Funding Subgrant Code | | |
| 339.03 | see attached | 134734 | 11 | | | | |
| FY | State | Federal | Interdepartmental | Other | TOTAL Contract Amount | | |
| 09 | | \$ 486,388.00 | | | \$ 486,388.00 | | |
| 10 | | \$ 231,800.00 | | | \$ 231,800.00 | | |
| 11 | \$ 42,978.00 | \$ 186,622.00 | | | \$ 229,600.00 | | |
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| TOTAL: | \$ 42,978.00 | \$ 904,810.00 | \$ - | \$ - | \$ 947,788.00 | | |
| — COMPLETE FOR AMENDMENTS ONLY — | | | | State Agency Fiscal Contact & Telephone # | | | |
| FY | Base Contract & Prior Amendments | THIS Amendment ONLY | Gene Wood, Budget - 615/532-6676 | | | | |
| | | | State Agency Budget Officer Approval | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | Funding Certification (certification, required by T.C.A. § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred) | | | | |
| | | | | | | | |
| TOTAL: | \$ - | \$ - | | | | | |
| End Date | | | | | | | |
| Contractor Ownership (complete for ALL base contracts— N/A to amendments or delegated authorities) | | | | | | | |
| <input type="checkbox"/> African American | <input type="checkbox"/> Person w/ Disability | <input type="checkbox"/> Hispanic | <input checked="" type="checkbox"/> Small Business | <input type="checkbox"/> Government | | | |
| <input type="checkbox"/> Asian | <input type="checkbox"/> Female | <input type="checkbox"/> Native American | <input type="checkbox"/> NOT Minority/Disadvantaged | | | | |
| Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities) | | | | | | | |
| <input type="checkbox"/> RFP | <input type="checkbox"/> Competitive Negotiation* | | <input type="checkbox"/> Alternative Competitive Method* | | | | |
| <input checked="" type="checkbox"/> Non-Competitive Negotiation* | <input type="checkbox"/> Negotiation w/ Government (ID,GG,GU) | | | | | | |
| * Procurement Process Summary (complete for Non-Competitive Negotiation, Competitive Negotiation, OR Alternative Method) | | | | | | | |
| <p>The existing TN-WITS system is currently being used exclusively for the Access to Recovery (ATR) Program. The Division of Alcohol and Drug Abuse Services staff is spearheading and overseeing a project designed to enhance the existing TN-WITS system so it can be used for other State programs.</p> | | | | | | | |

PROPOSED CONTRACT SUMMARY SHEET SUPPLEMENT

| Contract Number: | | | | | | | |
|-------------------------|--------------------|--------------------|-------------|-------------------|----------------------|---------------|---------------------|
| Fiscal Year: | | 2011 | | | | | |
| Allotment Code | Cost Center | Object Code | Fund | Grant Code | Subgrant Code | CFDA # | Amount |
| 339.03 | 11410 | 134734 | 11 | | | 93.275 | \$186,622.00 |
| 339.03 | 11421 | 134734 | 11 | | | | \$42,978.00 |
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| TOTAL | | | | | | | \$229,600.00 |

FA CONTRACT INFORMATION SUPPLEMENTFOR ALL FA-TYPE CONTRACTS — COMPLETE EITHER SECTION A OR SECTION B

| | | | |
|---|---------------|---|--|
| Contract RFS # | 339.03-355-09 | | |
| Contractor: | FEI.com, Inc. | | |
| SECTION A— CONTRACTOR IS AN INDIVIDUAL | | SECTION B— CONTRACTOR IS A COMPANY (e.g., sole proprietorship, partnership, or corporation) | |
| Is or has the contractor been a state employee? <input type="checkbox"/> NO (no additional information required) <input type="checkbox"/> YES | | Does an individual, who is or has been a state employee, own controlling interest in (or own) the contractor company? <input checked="" type="checkbox"/> NO (no additional information required) <input type="checkbox"/> YES | |
| Was such employment within the past six months? <input type="checkbox"/> NO <input type="checkbox"/> YES (an approved rule exception permitting a contract within six months of employment is also required) | | Was such employment within the past six months? <input type="checkbox"/> NO <input type="checkbox"/> YES (an approved rule exception permitting a contract within six months of employment is also required) | |
| Does the contractor receive Tennessee Consolidated Retirement System (TCRS) retirement benefits? <input type="checkbox"/> NO <input type="checkbox"/> YES (the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines) | | Does the individual who owns controlling interest in the contractor company receive Tennessee Consolidated Retirement System (TCRS) retirement benefits? <input type="checkbox"/> NO <input type="checkbox"/> YES (the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines) | |
| CONTRACTOR SIGNATURE | | | |
| | | | |
| CONTRACTOR | | DATE | |

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES
AND
FEI.COM, INC.**

This Contract, by and between the State of Tennessee, Department of Mental Health and Developmental Disabilities, hereinafter referred to as the "State" and FEI.com, Inc., hereinafter referred to as the "Contractor," is for the provision of the development and enhancement of the existing web-based Tennessee Web Infrastructure for Treatment Services (TN-WITS) system and user support, training, maintenance, and hosting of the enhanced TN-WITS system upon completion and acceptance by the State as further defined in the "SCOPE OF SERVICES."

RECEIVED

The Contractor is a for profit corporation.

Contractor Federal Employer Identification or Social Security Number: 52-2067447

NOV 06 2008

Contractor Place of Incorporation or Organization: Maryland

FISCAL REVIEW

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Web Infrastructure for Treatment Services (WITS) application platform uses a multi-tier architecture that optimizes performance and flexibility by separating data, business logic, and user interfaces. The platform is customized for use in Tennessee to support different functionalities, screens, business logic, and business process flows as needed in support of the State's programs. The WITS application platform contains modules to address Client Management, Treatment Services, Provider Management Functions, and System Administration. The WITS system collects and manages a wide range of data through the use of a relational database that contains information on provider agencies, their programs and staff, their clients, and treatment episodes. The data is structured and recorded in such a way as to assist the State in meeting the federal reporting requirements of some of the State's funding source(s).
- A.3. The existing TN-WITS system is currently being used exclusively for the Access to Recovery (ATR) program. The State's Division of Alcohol and Drug Abuse Services (DADAS) staff is spearheading and overseeing a project designed to enhance the existing TN-WITS system so it can be used for other State programs as described in this Scope of Services.
- A.4. Initial Implementation and Configuration:
 - a. The Contractor shall provide the following services within the Initial Implementation and Configuration of the enhanced TN-WITS system:
 - (1) The Contractor shall conduct and document a gap analysis to:
 - i. Determine which Alcohol and Drug Management Information System (ADMIS) functionalities need to be integrated into the existing TN-WITS system;
 - ii. Discuss with the State and document decisions on merging the Access to Recovery ATR and Substance Abuse Prevention and Treatment (SAPT) Block Grant systems;
 - iii. Document State policy changes that will result from migrating to a new database system and processes.

- iv. Define and document development and enhancement needed to support the functions of other State funding streams including, but not limited to, the SAPT Block Grant and the Alcohol and Drug Addiction Treatment (ADAT) Program;
 - v. Define and document development and enhancement needed to meet the audit trail requirements described in Section A.6.; and
 - vi. Analyze and document the changes that will need to be made to the current TN-WITS Structured Query Language (SQL) reporting system to incorporate the additional programs.
- (2) The Contractor shall create a written Implementation Plan including the following items:
- i. A Data Migration plan with a data mapping document for profile data conversion and migration from the ADMIS system;
 - ii. A Treatment Episode Data Set (TEDS) and National Outcome Measures (NOMS) upload transition plan;
 - iii. A WITS/ATR Integration Testing Plan; and
 - iv. A Training and Roll-out Plan.
- (3) The Contractor shall create, conduct, and document as required the following configurations:
- i. A Code Table Configuration wherein the Contractor shall modify and load one hundred sixty (160) WITS code tables according to State business rules;
 - ii. A Rate Table Configuration wherein the Contractor shall assist State project personnel to formulate rates for WITS services and load the rates into the TN-WITS system;
 - iii. A Field Configuration wherein the Contractor shall configure each field according to State business rules as specified in the gap analysis report; and
 - iv. A Screen Configuration wherein the Contractor shall enable or remove each screen according to State business rules as specified in the gap analysis report. The Contractor shall perform a thorough impact analysis before enabling and removing screens.
- (4) The Contractor shall create and document as required a Workflow Customization wherein the Contractor shall analyze WITS workflow in comparison to State workflow. The Contractor may modify WITS workflow to accommodate State requirements.

A.5. Developments and Enhancements:

- a. Contractor shall design and conduct development of the following enhancements agreed to by the State:
 - (1) Prevention and Treatment NOMS Module:

- i. The Contractor shall analyze the business rules and data fields required for a federally-compliant Prevention NOMS data collection and reporting system; and
 - ii. The Contractor shall make the necessary additions and enhancements to the existing TN-WITS system in order to comply with Federal NOMS reporting requirements.
- (2) Migrating all Client Profile Data from ADMIS to TN-WITS:
 - i. The existing Microsoft Access-based ADMIS system is currently used to capture all non-ATR client data throughout the State of Tennessee. The Contractor shall import all active client profile and demographics data into the existing TN-WITS system, including preserving the ADMIS unique client ID field, but excluding all clinical activities and billing; and
 - ii. The Contractor shall make the necessary additions and enhancements to the existing TN-WITS system in order to comply with Federal NOMS reporting requirements.
- (3) Integration with ATR:
 - i. The addition of modules into the current TN-WITS system will affect the work flow to which users have been accustomed while using the existing TN-WITS system to manage the ATR program. The Contractor shall, therefore, take measures to incorporate the new screens, new business rules, and new data fields while maintaining the overall usability of the TN-WITS system. This includes identifying the most appropriate areas of the system to which users will be directed for each "type" of client, specifically making certain that data fields are required based on the selected funding source(s).
- (4) NOMS and TEDS Data Collection and Uploads:
 - i. The Contractor shall analyze the business rules and data fields required for a federally compliant TEDS and NOMS data collection and reporting system; and
 - ii. The Contractor shall make the necessary additions and enhancements to the existing TN-WITS system in order to comply with Federal TEDS and NOMS reporting requirements, including building an upload module that will electronically send all TEDS and NOMS data to the Center for Substance Abuse Treatment (CSAT) contractor.
- (5) Audit Trail Requirements:
 - i. As identified and documented during the gap analysis conducted as part of the Initial Implementation and Configuration phase described in Section A.4.a., the Contractor, in agreement with the State, shall make the necessary enhancements to user screens to meet the audit trail requirements described in Section A.6.
- (6) Billing with Contract Management and Payor System:
 - i. The TN-WITS system currently being used contains a version of the billing system which has been simplified to support only the ATR program. This Billing with Contract Management and Payor System phase of the project will involve analyzing and implementing the required

business rules and data fields for additional State funding sources to bring the existing TN-WITS system up to the full capabilities of the original WITS billing module; and

- ii. The Contract management module will allow the State to specify subcontracts to providers, including the ability to set facility or agency-specific rates; start and end dates; allowable services; and funding caps. The Payor system will provide for the ability for each funding source to have its own set of adjudication rules which will be discovered and documented during the gap analysis conducted as part of the Initial Implementation and Configuration phase described in Section A.4.a.

(7) The Contractor shall make any other enhancements agreed to by the State and the Contractor in response to user recommendations.

- b. The Contractor shall provide user documentation for the enhanced TN-WITS system in an editable electronic format, with the capability for printing in hard copy when required.
- c. The Contractor shall provide an operation manual for technical personnel in an editable electronic format, with the capability for printing in hard copy when required. This operation manual shall provide complete information and instructions in the technical operation, maintenance, and administration of the enhanced TN-WITS system.
- d. The Contractor shall provide Structured Query Language (SQL) Server Reporting Services (SSRS) hosting, updates, and support.

A.6. Health Insurance Portability and Accountability Act (HIPAA) Data Security and Privacy Compliance:

- a. To ensure continual awareness of any information system activity; and to enable the State to record and examine system activity to (1) identify suspect data activity, (2) see if high-risk patterns are present, and (3) to assess the security program and respond to potential weaknesses; and in pursuant to the privacy and security regulations of HIPAA governing information system activity review and audit controls, particularly Title 45 Code of Federal Regulations §§ 164.308(a)(1)(ii)(D) and 164.312, the State requires that any software deliverable provided and/or developed under the terms of this Contract which will collect and/or house protected health information (PHI) as defined under the privacy and security provisions of HIPAA shall provide for a system-generated and system-maintained audit trail which identifies, at a minimum, the following:

- (1) A system stamp of date and time of any transaction (add, change, delete, view) which initially records or updates any information in the record, file, and/or database;
- (2) The user account of the person originating the transaction;
- (3) The internet protocol (IP) address from where the transaction originated;
- (4) Any data entered, if added type transaction;
- (5) Any data changed, if changed type transaction;
- (6) Any data deleted, if deleted type transaction; and
- (7) The reason why the access and/or change and/or deletion was made.

- b. Each audit trail shall be maintained for a minimum of three (3) years from time of creation.

A.7. Training:

- a. Contractor shall provide user training in the operation of the enhanced TN-WITS system as follows:
 - (1) One (1) onsite full day session for the operation of the enhanced TN-WITS system; and
 - (2) One (1) WebEx online session for the operation of the enhanced TN-WITS system.

A.8. Support:

Contractor shall provide Tier 3 User Support for the enhanced TN-WITS system to include interfacing with State support staff on all user and technical issues. Additionally, the Contractor shall provide ongoing maintenance and application support of the enhanced TN-WITS system for twenty-seven and one-half (27.5) months of the Contract term. Such activities are to begin after the conclusion of the Initial Implementation and Configuration phase, but no later than March 15, 2009.

A.9. Hosting:

- a. Contractor shall host the enhanced TN-WITS system with the following services:
 - (1) Highly Secure Hosting Environment;
 - (2) Biometric Access Required;
 - (3) Monitored twenty-four hours per day/seven days per week (24/7);
 - (4) Fully redundant Uninterruptible Power Supplies, guaranteeing a ninety-nine and nine-tenths percent (99.9%) 'up time' during prime time as defined as 8:00 am – 5:00 pm Central time, Monday through Friday;
 - (5) Network redundancy;
 - (6) Cages and racks that require access codes and biometrics to access;
 - (7) Multiple Inline Firewalls;
 - (8) Internet Connectivity at ten (10) megabits per second (mbps); and
 - (9) Database Backup (Nightly).
- b. Hosting of the enhanced TN-WITS system shall occur for twenty-seven and one-half (27.5) months of the Contract term, beginning after the conclusion of the Initial Implementation and Configuration phase, but no later than March 15, 2009.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on November 15, 2008 and shall terminate on June 30, 2011. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed Nine Hundred Forty-Seven Thousand Seven Hundred Eighty-Eight Dollars (\$947,788).

The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

| Service Description | Year 1 11-15-08 To 6-30-09 | Year 2 7-1-09 To 6-30-2010 | Year 3 7-1-2010 To 6-30-2011 |
|--|-------------------------------------|-------------------------------------|---------------------------------------|
| Complete the Initial Implementation and Configuration as outlined in Section A.4. no later than four (4) months after Contract start date (by March 14, 2009). Payment for each activity in this phase will occur upon acceptance by the State's Data Coordinator. | \$95,000 | | |
| Complete the Developments and Enhancements as outlined in Section A.5. for the improvements of the existing TN-WITS system. Payments for enhancements will occur upon testing and acceptance by the State's Data Coordinator and be based on the gap analysis. | \$286,623 | | |
| Provide user training on the enhanced TN-WITS system per section A.7. One (1) on-site full day training session, at a cost of \$5,500, and one (1) WebEx session, at a cost of \$2,250, shall be conducted at a time agreed upon by the State and the Contractor but must occur by the end of Year 1 of the Contract term (by June 30, 2009). Payment shall be made after each training session. | \$7,750 | | |
| Provide monthly Tier 3 user support and ongoing maintenance and application support of the enhanced TN-WITS system per Section A.8. for a total of twenty-seven and one-half (27.5) months [three and | \$55,825 | \$191,400 | \$191,400 |

| | | | |
|--|-----------|-----------|-----------|
| one-half (3.5) months in Year 1; twelve (12) months in Year 2; and twelve (12) months in Year 3] of the Contract term, beginning after conclusion of the Initial Implementation and Configuration phase but no later than March 15, 2009 at a rate of \$15,950 per month. | | | |
| Provide monthly hosting of the enhanced TN-WITS application per section A.9. for a total of twenty-seven and one-half (27.5) months [three and one-half (3.5) months in Year 1; twelve (12) months in Year 2; and twelve (12) months in Year 3] of the Contract term, beginning after conclusion of the Initial Implementation and Configuration phase but no later than March 15, 2009, at a rate of \$3,000 per month. | \$10,500 | \$36,000 | \$36,000 |
| Additional Services for the enhanced TN-WITS system shall be provided as needed and as approved by the State throughout the Contract term, at a rate of \$110 per hour not to exceed a total of three hundred thirty nine (339) hours for the Contract term; one hundred fifty-seven (157) hours in Year 1; one hundred one (101) hours in Year 2; and eighty-one (81) hours in Year 3. | \$17,270 | \$11,110 | \$8,910 |
| Total: \$947,788 | \$472,968 | \$238,510 | \$236,310 |

C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.

C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.

- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Department of Mental Health and Developmental Disabilities
Fiscal Services
10th Floor, Andrew Johnson Tower
710 James Robertson Parkway
Nashville, Tennessee 37243

- b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.

- (1) Invoice/Reference Number (assigned by the Contractor);
- (2) Invoice Date;
- (3) Invoice Period (period to which all invoiced charges are applicable);
- (4) Contract Number (assigned by the State to this Contract);
- (5) Account Name: Department of Mental Health and Developmental Disabilities;
- (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
- (7) Contractor Name;
- (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
- (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
- (10) Contractor Remittance Address;
- (11) Complete Itemization of Charges, which shall detail the following:

- i. Service or Milestone Description (including name /title as applicable) of each service invoiced;
 - ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.
 - c. The Contractor understands and agrees that an invoice to the State under this Contract shall:
 - (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) not include any future work but will only be submitted for completed service; and
 - (3) not include sales tax or shipping charges.
 - d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
 - e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:**
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.
- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.

- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment 1, hereto, semi-annually during the period of this Contract. Such attestations shall be maintained by the Contractor and made available to state officials upon request.
- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from

such subcontractors shall be maintained by the Contractor and made available to state officials upon request.

- c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.
- The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.
- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.

- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, natural disasters, riots, wars, epidemics or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

The State:

Linda M. Parker, Director
Office of Program Support
Division of Policy and Legislation
Tennessee Department of Mental Health and Developmental Disabilities
Third Floor, Cordell Hull Building
425 5th Avenue, North
Nashville, Tennessee 37243
EMAIL: Linda.Parker@state.tn.us
Telephone # 615-532-6741
FAX# 615-253-3920

The Contractor:

Jiao Zhong Gu, CEO
FEI.com, Inc.
8930 Old Annapolis Road, Suite C
Columbia, MD 21045
EMAIL: iqu@feinfo.com
Telephone # 443-270-5101
FAX# 410-712-0220

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Voluntary Buyout Program. The Contractor acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program (VBP) severance payment with regard to contracts with state agencies that participated in the VBP.
- a. The State will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.
 - b. The State may contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, the Contractor understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a State contractor would not be appropriate, and in such cases the State may refuse Contractor personnel. Inasmuch, it shall be the responsibility of the State to review Contractor personnel to identify any such issues.
 - c. With reference to either subsection a. or b. above, a contractor may submit a written request for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be

submitted to the State in the form of the *VBP Contracting Restriction Waiver Request* format available from the State and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of the head of the state agency that is a Party to this Contract, the Commissioner of Finance and Administration, and the Commissioner of Human Resources.

E.6. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.

a. The Contractor shall maintain, at minimum, the following insurance coverage:

- (1) Workers' Compensation/ Employers' Liability (including all states coverage) with a limit not less than the relevant statutory amount or one million dollars (\$1,000,000) per occurrence for employers' liability whichever is greater.
- (2) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate.
- (3) Automobile Coverage (including owned, leased, hired, and non-owned vehicles) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000) per occurrence.
- (4) Professional Malpractice Liability with a limit of not less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate.

b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.

E.7. Confidentiality of Records. Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

- E.8. HIPAA Compliance. The State and the Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
- a. The Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this contract.
 - b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the grant so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and the Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this grant is NOT "protected health information" as defined by HIPAA, or if HIPAA permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.9. Rule 2 Compliance. The State and the Contractor shall comply with obligations under Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations as codified at 42 CFR § 2.1 et seq.
- a. The Contractor warrants to the State that it is familiar with the requirements of Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its accompanying regulations, and will comply with all applicable requirements in the course of this Contract.
 - b. The Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and its regulations, in the course of performance of the grant so that both parties will be in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, and that are reasonably necessary to keep the State and the Contractor in compliance with Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records. This provision shall not apply if information received by the State under this grant is NOT "protected health information" as defined by Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records, or if Rule 2 of the Confidentiality of Alcohol and Drug Abuse Patient Records permits the State to receive such information without entering into a business associate agreement or signing another such document.
- E.10. State Ownership of Work Products. The State shall have ownership, right, title, and interest, including ownership of copyright, in all work products, including computer source code, created, designed, developed, derived, documented, installed, or delivered under this Contract subject to the next subsection and full and final payment for each "Work Product." The State shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said Work Products.
- a. To the extent that the Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the Contractor shall retain all right, title and interest in and to such Contractor Materials, and the State shall acquire no right, title or interest in or to such Contractor Materials

EXCEPT the Contractor grants to the State an unlimited, non-transferable license to use, copy and distribute internally, solely for the State's internal purposes, any Contractor Materials reasonably associated with any Work Product provided under the Contract.

- b. The Contractor shall furnish such information and data as the State may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any Work Product and Contractor Materials reasonably associated with any Work Product, in accordance with this Contract and applicable state law.
- c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
- d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

E.11. Ownership of Software and Work Products.

a. Definitions:

- (1) "Contractor-Owned Software," which shall mean commercially available software the rights to which are owned by Contractor, including but not limited to commercial "off-the-shelf" software which is not developed using State's money or resources.
- (2) "Custom-Developed Application Software," which shall mean customized application software developed by Contractor solely for State.
- (3) "Rights Transfer Application Software," which shall mean any pre-existing application software owned by Contractor or a third party, provided to State and to which Contractor will grant and assign, or will facilitate the granting and assignment of, all rights, including the source code, to State.
- (4) "Third-Party Software," which shall mean software not owned by the State or the Contractor.
- (5) "Work Product," which shall mean all deliverables exclusive of hardware, such as software, software source code, documentation, planning, etc., that are created, designed, developed, or documented by the Contractor for the State during the course of the project using State's money or resources, including Custom-Developed Application Software. If the system solution includes Rights Transfer Application Software, the definition of Work Product shall also include such software.

b. Rights and Title to the Software:

- (1) All right, title and interest in and to the Contractor-Owned Software shall at all times remain with Contractor, subject to any license granted herein.
- (2) All right, title and interest in and to the Work Product, and to modifications thereof made by State, including without limitation all copyrights, patents, trade secrets and other intellectual property and other proprietary rights embodied by and arising out of the Work Product, shall belong to State. To the extent such rights do not automatically belong to State, Contractor hereby assigns, transfers, and conveys all right, title and interest in and to the Work Product, including without limitation the copyrights, patents, trade secrets, and other intellectual

property rights arising out of or embodied by the Work Product. Contractor shall execute any other documents that State or its counsel deem necessary or desirable to document this transfer and/or allow State to register its claims and rights to such intellectual property rights or enforce them against third parties, and Contractor shall cooperate fully in the foregoing endeavors.

- (3) All right, title and interest in and to the Third-Party Software shall at all times remain with the third party, subject to any license granted thereby.
 - c. Nothing in this Contract shall prohibit the Contractor's use for its own purposes of the general knowledge, skills, experience, ideas, concepts, know-how, and techniques obtained and used during the course of providing the services requested under this Contract.
 - d. Nothing in the Contract shall prohibit the Contractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.
- E.12. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.
- E.13. Prohibited Advertising. The Contractor shall not refer to this Contract or the Contractor's relationship with the State hereunder in commercial advertising in such a manner as to state or imply that the Contractor or the Contractor's services are endorsed. It is expressly understood and agreed that the obligations set forth in this section shall survive the termination of this Contract in perpetuity.
- E.14. Public Accountability. If the Contractor is subject to *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4 or if this Contract involves the provision of services to citizens by the Contractor on behalf of the State, the Contractor agrees to establish a system through which recipients of services may present grievances about the operation of the service program, and the Contractor shall display in a prominent place, located near the passageway through which the public enters in order to receive services pursuant to this Contract, a sign at least twelve inches (12") in height and eighteen inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

- E.15. Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
- a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a

Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this contract, grant, loan, or cooperative agreement, the Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

- c. The Contractor shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, *U.S. Code*.

- E.16. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.17. Hold Harmless. The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.18. Drug-Free Workplace. The Contractor agrees that it shall provide a drug-free workplace pursuant to the Drug-Free Workplace Act of 1988, Title 41 of the United States Code (41 USC)

§§ 701 et seq., and the regulations in Title 45 of the Code of Federal Regulations (45 CFR) Part 82.

- E.19. Additional Subcontracting Requirements. If subcontracts are approved by the State, they shall contain, in addition to those sections identified in D.5., sections on "Confidentiality of Records", "HIPAA Compliance", and "Rule 2 Compliance" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- E.20. Partial Takeover. The State may, at its convenience and without cause, exercise a partial takeover of any service which the Contractor is obligated to perform under this Contract, including but not limited to any service which is the subject of a subcontract between Contractor and a third party, although the Contractor is not in Breach (hereinafter referred to as "Partial Takeover"). Said Partial Takeover shall not be deemed a Breach of Contract by the State. Contractor shall be given at least 30 days prior written notice of said Partial Takeover with said notice to specify the area(s) of service the State will assume and the date of said assumption. Any Partial Takeover by the State shall not alter in any way Contractor's other obligations under this Contract. The State may withhold from amounts due the Contractor the amount the Contractor would have been paid to deliver the service as determined by the State. The amounts shall be withheld effective as of the date the State assumes the service. Upon Partial Takeover, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

IN WITNESS WHEREOF:

FEI.COM, INC.:

CONTRACTOR SIGNATURE

DATE

PRINTED NAME AND TITLE OF CONTRACTOR SIGNATORY (above)

DEPARTMENT OF MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES:

VIRGINIA TROTTER BETTS, MSN,JD,RN,FAAN,
COMMISSIONER

DATE

APPROVED:

**M. D. GOETZ, JR., COMMISSIONER
DEPARTMENT OF FINANCE AND ADMINISTRATION**

DATE

**DEBORAH E. STORY, COMMISSIONER
DEPARTMENT OF HUMAN RESOURCES**

DATE

JOHN G. MORGAN, COMPTROLLER OF THE TREASURY

DATE

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

| | |
|---|--|
| SUBJECT CONTRACT NUMBER: | |
| CONTRACTOR LEGAL ENTITY NAME: | |
| FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number) | |

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.

CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

PRINTED NAME AND TITLE OF SIGNATORY

DATE OF ATTESTATION

FA CONTRACT INFORMATION SUPPLEMENTFOR ALL FA-TYPE CONTRACTS — COMPLETE EITHER SECTION A OR SECTION B

| | |
|---|---|
| Contract RFS # | 339.03-355-09 |
| Contractor: | FEI.com, Inc. |
| SECTION A— CONTRACTOR IS AN INDIVIDUAL | SECTION B— CONTRACTOR IS A COMPANY (e.g., sole proprietorship, partnership, or corporation) |
| Is or has the contractor been a state employee? <input type="checkbox"/> NO (no additional information required) <input type="checkbox"/> YES | Does an individual, who is or has been a state employee, own controlling interest in (or own) the contractor company? <input checked="" type="checkbox"/> NO (no additional information required) <input type="checkbox"/> YES |
| Was such employment within the past six months? <input type="checkbox"/> NO <input type="checkbox"/> YES (an approved rule exception permitting a contract within six months of employment is also required) | Was such employment within the past six months? <input type="checkbox"/> NO <input type="checkbox"/> YES (an approved rule exception permitting a contract within six months of employment is also required) |
| Does the contractor receive Tennessee Consolidated Retirement System (TCRS) retirement benefits? <input type="checkbox"/> NO <input type="checkbox"/> YES (the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines) | Does the individual who owns controlling interest in the contractor company receive Tennessee Consolidated Retirement System (TCRS) retirement benefits? <input type="checkbox"/> NO <input type="checkbox"/> YES (the procuring agency general counsel MUST sign an analysis of this procurement using the TCRS analysis guidelines) |
| CONTRACTOR SIGNATURE | |
| | |
| CONTRACTOR | DATE |